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Committee of Experts on International Cooperation in Tax Matters
Twelfth session
Geneva, 11-14 October 2016

Provisional agenda and organization of work

Provisional agenda

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
   - (a) Issues related to the updating of the United Nations Model Tax Convention:
     - (i) Article 1 (Persons covered): application of treaty rules to hybrid entities;
     - (ii) Article 8 (Shipping, inland waterways transport and air transport): the meaning and coverage of the term "profits from the operation of ships or aircraft in international traffic";
     - (iii) Article 12 (Royalties): possible amendments to the commentary on article 12 in relation to:
       - a. Industrial, commercial or scientific equipment;
       - b. Software-related payments;
     - (iv) Article 23 A (Exemption method): minority view on inclusion of paragraph 4;
     - (v) Article 26 (Exchange of information): proposed Code of Conduct;
     - (vi) Taxation of services:
       - a. Commentary on the article on technical services;
       - b. Proposed article 12 alternative;
     - (vii) Base erosion and profit-shifting;

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(b) Other issues:

(i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;

(ii) Taxation of the extractive industries;

(iii) Taxation of development projects;

(iv) Capacity-building;

(v) Mutual agreement procedure — dispute avoidance and resolution;

(vi) International trade in goods — tax issues;

(vii) Tax incentives — presentation by delegate from the International Monetary Fund.

4. Dates and provisional agenda for the thirteenth session of the Committee.

5. Adoption of the report of the Committee on its twelfth session.

Provisional organization of work

Date	*Item*	
Tuesday, 11 October 2016		
9-10 a.m.		Registration of participants
10-10.45 a.m.	1	Opening of the session by the Chair of the Committee
	2	Adoption of the agenda and organization of work
	3	Discussion of substantive issues related to international cooperation in tax matters:
10.45-11.45 a.m.	3 (a) (i)	Article 1 (Persons covered): application of treaty rules to hybrid entities
11.45 a.m.-12 p.m.		Coffee break
12-1 p.m.	3 (a) (v)	Article 26 (Exchange of information): proposed Code of Conduct
1-3 p.m.		Lunch break
3-3.45 p.m.	3 (a) (ii)	Article 8 (Shipping, inland waterways transport and air transport): the meaning and coverage of the term "profits from the operation of ships or aircraft in international traffic"
3.45-4 p.m.		Coffee break
4-5.30 p.m.	3 (a) (ii)	Article 8 (Shipping, inland waterways transport and air transport) (continued)
5.30-6 p.m.	3 (b) (iii)	Taxation of development projects
Wednesday, 12 October		
10-11.45 a.m.	3 (b) (i)	Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries
11.45 a.m.-12 p.m.		Coffee break
12-1 p.m.	3 (b) (ii)	Taxation of the extractive industries
1-3 p.m.		Lunch break
3-3.45 p.m.	3 (b) (ii)	Taxation of the extractive industries (continued)
3.45-4 p.m.		Coffee break
4-6 p.m.	3 (a) (vi)	Taxation of services: a. Commentary on the article on technical services; b. Proposed article 12 alternative

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Date	*Item*	
Thursday, 13 October		
10-11.45 a.m.	3 (a) (vi)	Taxation of services (continued)
11.45 a.m.-12 p.m.		Coffee break
12-1 p.m.	3 (a) (vii)	Base erosion and profit-shifting
1-3 p.m.		Lunch break
3-3.45 p.m.	3 (a) (vii)	Base erosion and profit-shifting (continued)
3.45-4.15 p.m.	3 (a) (iv)	Article 23 A (Exemption method): minority view on inclusion of paragraph 4
4.15-4.45 p.m.	3 (b) (iv)	Capacity-building
4.45-5 p.m.		Coffee break
5-6 p.m.	3 (b) (iv)	Capacity-building (continued)
Friday, 14 October		
10-11.30 a.m.	3 (a) (iii)	Article 12 (Royalties): possible amendments to the commentary on article 12 in relation to: a. Industrial, commercial or scientific equipment; b. Software-related payments
11.30-11.45 a.m.		Coffee break
11.45 a.m.-12.15 p.m.	3 (b) (vi)	International trade in goods — tax issues
12.15-1 p.m.	3 (b) (v)	Mutual agreement procedure — dispute avoidance and resolution
1-3 p.m.		Lunch break
3-3.45 p.m.	3 (b) (v)	Mutual agreement procedure (continued)
3.45-4.30 p.m.	3 (b) (vii)	Tax incentives — presentation by delegate from the International Monetary Fund
4.30-4.45 p.m.		Coffee break
4.45-5.45 p.m.	4	Dates and provisional agenda for the thirteenth session of the Committee
5.45-6 p.m.	5	Adoption of the report of the Committee on its twelfth session; closing of the session

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Committee of Experts on International Cooperation in Tax Matters
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Item 3 (b) (iv) of the provisional agenda*
Discussion of substantive issues related to international cooperation in tax matters: other issues: capacity-building

Enhancing the effectiveness of external support in building tax capacity in developing countries

Note by the Secretariat

1. Ministers of Finance and Central Bank Governors of the Group of 20, in their communiqué dated 27 February 2016, called upon the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), the United Nations and the World Bank Group to recommend mechanisms to help ensure effective implementation and funding of technical assistance programmes and to report back to the meeting of the Ministers of Finance and Central Bank Governors of the Group of 20 on 23 and 24 July 2016.

2. In response to that request, the four organizations, working jointly as members of the newly established Platform for Collaboration on Tax, developed a series of recommendations and enabling actions, drawing on their individual experiences in delivering technical cooperation projects and their interactions with other providers of technical assistance, development partners and, particularly, national Governments. These recommendations benefited from a public request for feedback, which attracted responses from Governments, businesses, civil society and individuals.

3. The annex to the present note reproduces the executive summary and the summary of recommendations included in the report of IMF, OECD, the United Nations and the World Bank Group submitted to the Group of 20, entitled "Enhancing the effectiveness of external support in building tax capacity in developing countries". Ministers of Finance and Central Bank Governors of the Group of 20 acknowledged the report at their meeting held in Chengdu, China, on 23 and 24 July 2016, and asked for a progress update by mid-2017. The full text of the report is posted online on the Financing for Development Office website (www.un.org/esa/ffd/tax-cooperation/tc_report-tax-collaboration-in-building-tax-capacity.html). The present note is submitted to the Committee of Experts on International Cooperation in Tax Matters, as well as to observers attending its twelfth session, for information and to seek further feedback.

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Annex

Extract from the report of the International Monetary Fund, the Organization for Economic Cooperation and Development, the United Nations and the World Bank Group to the Group of 20 on enhancing the effectiveness of external support in building tax capacity in developing countries

I. Executive summary

1. The present report responds to the request made in February 2016 by the Ministers of Finance and Central Bank Governors of the Group of 20 for the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), the United Nations and the World Bank Group to recommend mechanisms to help ensure effective implementation of technical assistance programmes, to recommend how countries can contribute funding for tax projects and direct technical assistance, and to report back with such recommendations at the meeting of the Group of 20 on 23 and 24 July 2016.

2. The report has been prepared within the framework of the Platform for Collaboration on Tax, under the responsibility of the secretariats and staff of the four mandated organizations. The report reflects a broad consensus among these staff, but should not be regarded as the officially endorsed views of those organizations or of their member States.[a,b]

3. The request arises in the context of increased recognition of the centrality to development of strong tax systems, of the importance of external support in building them and of the correspondingly increased willingness of advanced economies to provide substantially greater financing and other support for this purpose. It is recognized that, while real progress has been made in increasing tax revenues in low income countries over the past two decades, for many countries revenues remain well below the levels that are likely needed to achieve the 2030 Sustainable Development Goals and to secure robust and stable growth. The report also adopts, as a fundamental premise, that it is not simply how much revenue is raised that matters for development and growth, but also how it is raised — and that strong tax systems are key for both equity objectives and enhancing State-building.

4. In that context, the report uses the experiences of the international organizations to analyse how support for developing tax capacity can be improved. It does not attempt to reiterate the nature of the challenges faced by developing countries, about which much has been written — but rather focuses on ensuring that the countries have the support needed to overcome those challenges.

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[a] Reflecting these facts, it should be noted that, to the extent that recommendations included herein imply that certain tasks will be undertaken by the Platform for Collaboration on Tax, implementation would be premised on adequate resources being made available to do so.

[b] The report has benefited from comments submitted by countries, civil society organizations, business organizations and individuals received during a public review period (30 June-8 July 2016).

5. An indispensable prerequisite for improving tax capacity is enthusiastic country commitment. While such political commitment must arise within the country and its Government and cannot be created by external support, the report assesses ways in which such support can encourage and reinforce that necessary commitment. Given such commitment, the report points to several key enablers to building tax capacity:

- A coherent revenue strategy as part of a development financing plan
- Strong coordination among well-informed and results-oriented providers
- A strong knowledge and evidence base
- Strong regional cooperation and support
- Strengthened participation of developing countries in international rule setting.

6. The report provides a number of recommendations for measures to strengthen or achieve those enablers, foremost among which include: (a) options through which the Group of 20, international organizations and other development partners can encourage political support for the development of tax systems; (b) the development of country-owned medium-term revenue strategies, or tax reform plans, depending on country circumstances; (c) support to non-government stakeholders; (d) support by development partners in increasing managerial and technical skills in taxation agencies; (e) various approaches to developing better coordination and collaboration among providers, and avoidance of fragmented support and approaches; (f) intensification of work by the partners in the Platform for Collaboration on Tax Matters and others in order to produce comparable and reliable data; (g) increased partnerships and support for regional tax organizations; and (h) support for the effective participation of developing countries in international tax policy discussions and institutions.

7. The agenda going forward would include implementation of 3 to 5 pilot medium-term revenue strategies; support for the effective participation of developing countries in international tax policy discussions and institutions; work by the international organizations to measure and report on the impact of various different interventions; and a follow-up report by the international organizations within three years to reflect lessons learned from actions taken hereunder.

II. Summary of recommendations

The Essential: Deep country commitment within a supportive political environment

8. **Recommendation 1**: The Group of 20, international organizations and development partners should encourage political support for the development of tax systems. Options include explicit requirements for financial support and mutual accountability provisions such as those in the Addis Tax Initiative.

Enabler 1: A coherent revenue strategy as part of the development of financing plans

9. **Recommendation 1 (a)**: National authorities, with support from international organizations that are active in a country, and development partners engaged in support on tax reform to develop country-specific midterm revenue strategies,[c] with a view to launching 3 to 5 pilot strategies by July 2017. Building on this experience, Platform partners will draw and disseminate lessons for the development of further strategies and of revenue reform plans more generally.

10. **Recommendation 1 (b)**: Donor/Group of 20 countries to encourage and facilitate capacity-building of local stakeholders (including businesses, civil society organizations and the media) to engage in reforms and the development of midterm revenue strategies.

Enabler 1.1: Adequate diagnosis of problems, risks and options for revenue strategy development

11. **Recommendation 1 (c)**: International organizations to develop a diagnostic tool/framework for assessing cross-border tax issues, covering avoidance, evasion and tax crimes.

Enabler 1.2: A strong managerial and skills base to develop and implement reform strategies

12. **Recommendation 1 (d)**: As part of the efforts to build organizational capacity, the Group of 20 and development partners to encourage and support the development of high quality senior management, including in technical and management skills in agencies that deal with taxation.

13. **Recommendation 1 (e)**: Partners in the Platform for Collaboration on Tax Matters will review and assess the use of diagnostic tools (such as the Tax Administration Diagnostic Assessment Tool) in informing the prioritization of reforms through midterm revenue strategies and the development of tax reform programmes, and will consider, as a result of such assessments, what more, if anything, would be useful in this regard.

Enabler 2: Strong coordination among well-informed and results-oriented providers

14. **Recommendation 2 (a)**: International organizations involved at the country level should facilitate explicit collaboration among providers and other stakeholders as a central part of the pilot midterm revenue strategies and, more broadly, facilitate the development of in-country coordination, both by donor groups and coordinating counterparts in developing countries.

15. **Recommendation 2 (b)**: To support country-level cooperation, Partners in the Platform for Collaboration on Tax Matters to develop a manual for good practices building on the 10 Principles for International Engagement in Supporting Developing Countries in Tax Matters promulgated by OECD in 2012 and a voluntary peer review mechanism among development partners. This would include

[c] Issues to be addressed include incentives for countries to participate, the phasing of implementation, building in flexibility to deal with potential policy changes as Government and circumstances change, stakeholder involvement, and modalities for support.

how to facilitate coordination among providers and different in-country stakeholders, such as business and civil society organizations.

16. **Recommendation 2 (c)**: The Platform for Collaboration on Tax Matters to develop mechanisms to support the development of coordinated plans for the work of all development providers in relation to the implementation of tax planning strategies to address base erosion and profit shifting and wider international tax issues.

Enabler 2.1: Avoiding fragmentation in the delivery and receipt of support

17. **Recommendation 2 (d)**: Providers and recipients of capacity-building support on tax matters should be well coordinated, including: effective coordination across different agencies active in tax reform in recipient countries, fully supported by providers of capacity-building support ("whole of Government" approach); while international organizations should ensure internal coordination where they are active in different areas affecting the tax system and across their different entry points into taxation ("whole of institutions" approach).

18. **Recommendation 2 (e)**: Group of 20 and development partners should more effectively facilitate the participation of their serving tax officials in capacity-building, including through the timely and efficient release of such officials to participate in capacity-building efforts.

Enabler 2.2: Clear and common measures of the effectiveness of support

19. **Recommendation 2 (f)**: The Platform for Collaboration on Tax Matters will review the range of results indicators currently used with a view to establishing a sound-practice results frameworks and guidance to track progress in ongoing reforms of the tax system (policies and administration) against a broad range of indicators, taking into account the need to ensure a proper balance between the needs of development partners and reporting burdens, and the appropriate application within the country context.

Enabler 3: A strong knowledge and evidence base

20. **Recommendation 3 (a)**: Partners in the Platform for Collaboration on Tax Matters and others to intensify their collaborative work to produce comparable and reliable data on revenue statistics and key tax policy parameters, and to intensify their efforts to build statistical capacity in the tax area (including in revenue administrations) while avoiding unnecessary duplication.

21. **Recommendation 3 (b)**: Group of 20 to encourage full participation in the International Survey of Revenue Administrations, leading by example.[d]

Enabler 4: Strong regional cooperation and support

22. **Recommendation 4**: Countries members of the Group of 20 and development partners to continue to work in close partnership with regional tax organizations and to provide support for: increasing their strength and coverage; fostering local

[d] An initiative of the Inter-American Center of Tax Administrations, IMF, the Intra-European Organization of Tax Administrations and OECD to collect comparable global data on revenue administration.

networks and the exchange of experiences; supporting capacity-building in targeted areas; and influencing and implementing international rule setting.

Enabler 5: Strengthened participation of developing countries in international rule setting

23. **Recommendation 5**: International organizations, regional tax organizations and development partners to support the effective participation of developing countries in international tax policy discussions and institutions. Good experiences would be disseminated with a view to scaling them up.

Enabler 6: Learning from experience

24. **Recommendation 6 (a)**: Working with other stakeholders, the Platform for Collaboration on Tax Matters will gather and disseminate experiences to gain further understanding of what has worked and what has not worked in tax development programmes, including by measuring the impact of different interventions.

25. **Recommendation 6 (b)**: International organizations will produce a follow-up report to the present report within three years to reflect lessons learned regarding effective support for capacity-building in the tax area, including on the development and implementation of the proposals covered herein.

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United Nations Capacity Development Programme on International Tax Cooperation

Note by the Secretariat

1. The paper contained in the annex to the present note provides an overview and update on progress in implementation of the United Nations capacity development programme on international tax cooperation under the responsibility of the Financing for Development Office of the Department of Economic and Social Affairs.

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Annex

United Nations capacity development programme on international tax cooperation

I. Link to the Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development

1. The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) and the 2030 Agenda for Sustainable Development (2030 Agenda) recognize capacity development as an integral part of the global partnership for sustainable development. They call for enhanced international support and the establishment of multi-stakeholder partnerships for implementing effective and targeted capacity-building in developing countries to support national plans to achieve the Sustainable Development Goals, including through North-South, South-South and triangular cooperation.

2. In a major expansion of the Monterrey Consensus and the Doha Declaration, the Addis Ababa Action Agenda devotes an area specifically to addressing capacity-building, which includes an overarching commitment to reinforcing national efforts in this area in developing countries, and also contains commitments to capacity-building in each of the other action areas, underscored by the principle that capacity development must be country-driven, address the country-specific needs and conditions and reflect national sustainable development strategies and priorities.

3. In the area of domestic resource mobilization, both the Addis Ababa Action Agenda and the 2030 Agenda refer to the need for assistance to developing countries in order to improve their domestic capacity for tax and other revenue collection. The Addis Ababa Action Agenda contains commitments to provide international support to developing countries in need in reaching targets for enhancing domestic revenue, as well as to strengthen international cooperation, including through enhanced official development assistance (ODA), with a view to supporting the efforts of these countries to build national capacity.

4. The Addis Ababa Action Agenda stresses the need to scale up international tax cooperation and recommends that efforts in this regard be universal in approach and scope and fully take into account the different needs and capacities of all countries. In this regard, it recognizes the need for technical assistance through multilateral, regional, bilateral and South-South cooperation, based on the different needs of countries.

5. In addition, the Addis Ababa Action Agenda calls for more inclusiveness and emphasizes the importance of the participation of developing countries in this work, including through their regional networks, in order to ensure that all countries can obtain benefit from it. To that end, it welcomes the work of the Committee of Experts on International Cooperation in Tax Matters, including its subcommittees, which provides a forum for inclusive cooperation and dialogue among national tax authorities, giving special attention to developing countries.

II. Mandate

6. In its resolutions 2013/24 and 2014/12, the Economic and Social Council reiterated and expanded the mandate given to the Financing for Development Office of the Department of Economic and Social Affairs in the area of capacity development. The Council recognized the progress made by the Financing for Development Office in its work in developing, within its mandate, a capacity development programme on international tax cooperation aimed at strengthening the capacity of the ministries of finance and national tax authorities in developing countries to develop more effective and efficient tax systems, which support the desired levels of public and private investment, and to combat tax evasion. It also requested the Office, in partnership with other stakeholders, to continue its work in this area and to further develop its activities.

III. Relationship with the Committee

7. Owing to the fact that the Financing for Development Office provides secretariat support to the Committee, its programme of capacity development on international tax cooperation draws, to a large extent, on the outputs of the Committee, with a view to disseminating and operationalizing them as capacity development tools for the benefit of developing countries. To that end, the Financing for Development Office conducts training and other capacity development events, and also delivers technical cooperation programmes by making use of materials based on the major outputs of the Committee, including the United Nations Model Double Taxation Convention between Developed and Developing Countries and the *United Nations Practical Manual on Transfer Pricing for Developing Countries*. In addition, the Financing for Development Office produces inputs for the work of the Committee at its request: for example, the development of practical papers on the negotiation of tax treaties, which were developed as an input into the latest revision of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

> In order to facilitate the dissemination and use of the *United Nations Practical Manual on Transfer Pricing for Developing Countries* among developing countries, the Financing for Development Office has developed the United Nations course on transfer pricing, as well as the primer on transfer pricing. Both of these training programmes have been developed in consultation with and drawing upon contributions by representatives of developing countries, members of the Committee of Experts, as well as representatives from relevant international and regional organizations.
>
> The course and the primer have been successfully introduced both in Africa, in cooperation with the African Tax Administration Forum, and in Latin America and the Caribbean, in cooperation with the Inter-American Center of Tax Administrations. To date, tax officials from 34 countries in both regions have participated in training programmes on the course and the primer. The Financing for Development Office plans to continue delivering these training programmes at the regional level, including in other regions. Moreover, to further increase dissemination, an online version of the primer will be developed.

Following the success of the above-mentioned training programmes, several countries have expressed interest in country-level technical assistance, drawing upon the *United Nations Practical Manual on Transfer Pricing for Developing Countries*. A first pilot technical cooperation project is being implemented for the internal revenue service (Servicio de Rentas Internas) of Ecuador.

8. In devising and implementing its capacity development programme, the Financing for Development Office also takes full advantage of the unique expertise and networks of the members of the Committee, who are involved in an advisory/expert role. They support the programme in several ways, including by: (a) contributing to identifying the needs of developing countries for capacity development in the area of international tax cooperation; (b) assisting in assessing what resources are already available and proposing tools to be developed in order to fill in the existing gaps and address the needs of developing countries; (c) providing inputs to and feedback on the development of capacity-building materials and undertaking a technical review of these materials; and (d) participating in and contributing to capacity development events organized by the Financing for Development Office.

9. The Committee has also set up an advisory group on capacity development, which is mandated to make recommendations on capacity-building and the provision of technical assistance to developing countries in the area of international cooperation in tax matters. To that end, the advisory group is to engage with the United Nations capacity development programme on international tax cooperation to ensure that the activities of the programme adequately reflect the work of the Committee, take into account the needs of developing countries, especially the least developed ones, and do not duplicate but effectively complement existing tools and resources at the disposal of developing countries.

IV. Key features

10. The United Nations programme of capacity development on international tax cooperation is focused on challenges and priorities of developing countries, especially the least developed countries. Recognizing the fact that countries with more experience in dealing with international tax matters may benefit from more advanced capacity development tools and initiatives already made available by other providers, the programme aims to support countries with less experience in order to bring them up to date and place them in a position to benefit from other existing tools and initiatives as well.

11. A distinct feature of the programme, which comprises a collection of capacity development tools and other resources on international tax cooperation, is that its development and implementation is the result of a unique collaborative engagement among Government representatives from developing countries, members of the Committee, a diversified group of world-renowned experts and representatives of relevant international and regional organizations. Consultations with tax officials from developing countries during all phases of the development and implementation

of activities play a critical role in ensuring that these activities are truly demand-driven, relevant and effective for the beneficiary countries.

> The *United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries* was developed through the collaborative efforts and with the contribution of officials from national tax authorities and ministries of finance in 35 developing countries, representing all regions of the world, as well as with members of the Committee, renowned international tax experts and representatives from international and regional organizations, including the African Tax Administration Forum, the East African Community, the Inter-American Center of Tax Administrations, the International Tax Compact and the Organization for Economic Cooperation and Development (OECD).

12. Cooperation and coordination with other international organizations and experts are sought in order to promote complementarities and avoid duplication, with due regard to their respective areas of focus, expertise and comparative advantages. Emphasis is placed also on partnering with regional organizations of tax administrations, including the African Tax Administration Forum and the Inter-American Center of Tax Administrations. Thanks to their networks, knowledge of tax systems and tax administrations and engagement in providing ongoing assistance to countries in their respective regions, they are uniquely positioned to provide support in identifying the demand for capacity development activities, implementing them at the regional level and ensuring their sustainability.

> The Financing for Development Office and the Inter-American Center of Tax Administrations joined forces to implement a project aimed at strengthening the capacity of tax administrations in developing countries in Latin America and the Caribbean to measure tax transaction costs in small and medium enterprises. The project focused on the development of an empirical methodology to assess both compliance costs borne by taxpayers and tax collection costs faced by tax administrations. This was undertaken with a view to identifying possible reforms to reduce these costs and, as a result, achieving greater compliance and more effective and efficient tax systems, leading to sustainable increases in Government revenues available for the funding national development goals.
>
> The above-mentioned methodology was developed in consultation with representatives from 13 developing countries in Latin America and the Caribbean and was pilot tested in Costa Rica and Uruguay. Subsequently, it was also used by tax administrations in Brazil and Chile. The methodology and the results of its pilot testing are presented in the publication entitled "Measuring Tax Transaction Costs in Small and Medium Enterprises" (available in English and in Spanish).

V. Areas of work

A. Double tax treaties

13. Work in the area of double tax treaties, drawing on the United Nations Model Convention, is the most advanced. In this area, the Financing for Development Office carries out a series of capacity development initiatives.

14. The United Nations Course on Double Tax Treaties introduces the fundamentals of double tax treaties and provides participants with a good understanding of the United Nations Model Convention, including the similarities with and differences from the OECD Model Tax Convention on Income and on Capital. The course, which is usually delivered in a regional setting, provides instruction by world-renowned experts and United Nations staff. Regional experts are invited to provide practical insights and relevant examples from their country practices throughout the course. It also combines theoretical aspects with a large amount of practical material in the form of examples and cases studies, which are discussed in small groups. The interactive nature of the course and inclusion of regional aspects facilitates South-South sharing among participants.

> The United Nations Course on Double Tax Treaties was developed through a unique collaborative engagement among a diverse group of authors and contributors, numerous members of the Committee and United Nations staff. In addition to analysing the treaty rules for the allocation of taxation rights between countries over cross-border income, the course deals with treaty provisions for the elimination of international double taxation and administrative provisions aimed at ensuring effective application of tax treaties.
>
> The course has been successfully delivered both in Africa, in cooperation with the African Tax Administration Forum, and in Latin America and the Caribbean, in cooperation with the Inter-American Center of Tax Administrations. To date, tax officials from 44 countries in both regions have participated in these events. The Financing for Development Office will continue delivering these training programmes at the regional level, including in other regions.

15. The United Nations Course on Double Tax Treaties is accompanied by the use of the United Nations primer on double tax treaties, which provides a brief introduction to the basic aspects of tax treaties. It is intended for tax officials with no prior experience in this area. It also serves as a pre-requisite for participants in the course, with a view to providing them with some common basics and enabling them to benefit more fully from the course. An online version of the primer is being developed.

16. In the area of tax treaty negotiation, following a recommendation by members of the Committee, the United Nations joined forces with OECD in establishing the United Nations-OECD practical workshop on negotiation of tax treaties, which is offered to tax treaty negotiators from developing countries on a biennial basis. At the request of the Committee, the Financing for Development Office has also

worked on the development of a series of practical papers on issues in tax treaty negotiation from the perspective of developing countries, which were issued as "Papers on Selected Topics in Negotiation of Tax Treaties for Developing Countries". These papers were presented to the Committee as an input into its work in this area and a summary of their content was included in the recently released update of the Manual for Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, which has been developed by the Committee through its Subcommittee on Negotiation of Tax Treaties — Practical Manual.

> The United Nations-OECD practical workshop on negotiation of tax treaties provides tax treaty negotiators from developing countries with hands-on experience in tax treaty negotiation. It features simulated negotiations of all the provisions of a tax treaty between two fictitious countries (a developed and a developing country), drawing on both the United Nations Model Double Taxation Convention between Developed and Developing Countries and the OECD Model Tax Convention on Income and on Capital. The first two sessions of the workshop (held in 2014 and 2016 respectively) were attended by representatives from 37 developing countries.

17. In the area of tax treaty administration, as part of a project implemented jointly with the International Tax Compact, the Financing for Development Office has developed the *United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries*. This publication, which is specifically designed for developing countries, aims to provide them, in particular those countries drawing upon the United Nations Model Convention, with practical guidance to effectively implement double tax treaties. The *Handbook*, which is available in English, French and Spanish, is used at capacity-building events, including workshops and seminars dealing with specific issues in administering tax treaty provisions.

B. Transfer pricing

18. The *United Nations Practical Manual on Transfer Pricing for Developing Countries* aims to respond to the need, often expressed by developing countries, for clearer guidance on the policy and administrative aspects of applying transfer-pricing analysis to intra-group transactions of multinational enterprises. In particular, it is aimed at countries seeking to apply the "arm's length standard" to transfer pricing issues, as endorsed both in the United Nations Model Convention and in the OECD Model Convention.

19. The United Nations Course on Transfer Pricing, which is based on the *United Nations Practical Manual*, aims to operationalize it among relevant authorities in developing countries, with a view to supporting them in dealing with transfer pricing. To that end, it provides an introduction to transfer pricing principles and methodologies and addresses the main practical issues faced by developing countries in applying these principles and methodologies. Similar to the United Nations Course on Double Tax Treaties, it is delivered in a regional setting, with the participation of experts from the tax administrations in the respective region, who

provide practical insights and relevant examples from their country's practices throughout the course.

20. The course is complemented by the United Nations primer on transfer pricing, which is intended for officials with limited or no experience in this area, providing a general overview of basic concepts of transfer pricing. It also serves as a prerequisite for participants in the course, with a view to providing them with some common basics and enabling them to benefit fully from the course.

C. Protecting the tax base of developing countries

21. The main tool developed by the Financing for Development Office in the area of tax base protection for developing countries is the *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*, which was presented at the third International Conference on Financing for Development (Addis Ababa, 13-16 July 2015) as a tangible deliverable towards the objectives of the Conference. The *Handbook* is intended to strengthen the capacity of developing countries to increase their potential for domestic revenue mobilization by protecting and broadening the tax base. To that end, it draws upon the work done in this area by the Committee, and its relevant subcommittees, including the Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries, as well as the work of OECD on the subject, as appropriate, with a view to complementing that work from the capacity development angle for the benefit of developing countries. In particular, the *Handbook* aims to simplify, summarize and systematize all relevant materials, with a view to providing information geared towards the needs of developing countries, including through the provision of practical examples tailored to the realities of those countries.

> In developing the *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries* special efforts were made to seek inputs and feedback from developing countries, members of the Committee and relevant international and regional organizations. To that end, the Financing for Development Office organized two ad hoc workshops in cooperation with OECD, which were held in New York and in Paris. Government officials from 21 developing countries representing all regions of the world, several members of the Committee as well as representatives from the African Tax Administration Forum, the Inter-American Center of Tax Administrations, the United Nations Economic Commission for Latin America and the Caribbean and the International Tax Compact participated in and contributed to these meetings. Their comments and suggestions were taken into account in reviewing the draft chapters and finalizing the *Handbook*.

22. The *Handbook* is intended to assist developing countries in three important areas: (a) engagement and effective participation in relevant international norm-setting and decision-making processes, including in OECD forums; (b) assessment of relevance and feasibility of different options to protect and broaden their tax base, including those proposed in the context of the OECD work on base erosion and profit shifting; and (c) effective and sustained implementation of the most

suitable options from which they would benefit. To that end, the *Handbook* provides a study of the work of OECD on base erosion and profit shifting, along with an analysis of the strategies proposed to address the relevant issues. In doing so, it aims to support developing countries in identifying the most appropriate modalities to protect their tax base, taking into account their needs and levels of development, as well as resource and capacity constraints. In addition to dealing with matters that are also considered in the context of the work of OECD on base erosion and profit sharing, with a view to reviewing the underlying fundamental policy and implementation aspects from the perspective of developing countries, the *Handbook* also addresses other topics, which developing countries have reported to be of particular relevance to them in protecting their tax base, namely: the taxation of cross-border services; the taxation of capital gains realized by non-residents; and tax incentives.

23. Currently, the Financing for Development Office is working on the development of an updated and expanded edition of the *Handbook*, taking into account new emerging issues and the latest international developments regarding base erosion and profit sharing and the protection and broadening of the tax base of developing countries. In addition, in order to complement and operationalize the *Handbook* through more in-depth and hands-on practical guidance, as well as to make it accessible to a broader audience of relevant stakeholders in developing countries, the Financing for Development Office is developing a series of practical portfolios on protecting the tax base of developing countries. These practical materials are intended to assist tax officials in developing countries to recognize the main causes of tax base erosion in their countries and to identify relevant issues in the context of their domestic tax law and network of tax treaties, with a view to assessing the various options available to them to effectively address these issues.

24. At present, the Financing for Development Office is working on finalizing a first set of practical portfolios which deal with base-eroding payments for services, interest, rents and royalties. Based on the demand expressed by developing countries on several occasions, additional practical portfolios will be developed addressing further issues of particular interest and relevance to developing countries, including on general anti-abuse rules and taxation of capital gains.

> The first set of draft practical portfolios on base-eroding payments was shared and discussed with a number of Government officials from 30 developing countries, members of the Committee, as well as representatives of international and regional tax organizations, at two workshops, one held in Panama City in June 2015, and the other in Berlin in December 2015.
>
> The Financing for Development Office plans to hold further consultations with representatives from developing countries both on the existing draft practical portfolios and on the drafts of additional practical portfolios that will be developed to address other relevant issues in protecting the tax base of developing countries, with a view to more comprehensively capturing and reflecting the point of view of these countries in the final versions of these materials.

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Item 3 (b) (vi) of the provisional agenda*
International trade in goods — tax issues

The World Customs Organization Guide to Customs Valuation and Transfer Pricing

Note by the Secretariat

1. A relevant publication for this agenda item is the World Customs Organization (WCO) Guide to Customs Valuation and Transfer Pricing (2015).[1] The document was drawn up with the participation of the Organization for Economic Cooperation and Development (OECD), the World Bank and the International Chamber of Commerce.

2. WCO has noted that the interaction between customs and transfer pricing regimes has been an important issue over recent years:[2]

> The issue concerns international transactions within a multi-national group. Customs' aim is to ensure that the price for transactions of imported goods is not influenced by the relationship between buyer and seller (based on the methodology for Customs valuation contained in the WTO Valuation Agreement). Tax administrations, on the other hand, are examining the same transactions to ensure the conditions are consistent with the "arm's length principle" for profit tax purposes. Generally, the methodology used for this purpose is based on the OECD Transfer Pricing Guidelines.[2]

3. The WCO Guide explains that:[1]

> For Customs valuation purposes, import transactions between two distinct and legally separate entities of the same MNE group are treated as "related party

* E/C.18/2016/1.

[1] World Customs Organization, *WCO Guide to Customs Valuation and Transfer Pricing*, ("WCO Guide") (2015); available at: http://www.wcoomd.org/en/topics/key-issues/revenue-package/~/media/36DE1A4DC54B47109514FFCD0AAE6B0A.ashx.

[2] World Customs Organization, "New WCO Guide to Customs Valuation and Transfer Pricing" (2015), available from http://www.wcoomd.org/en/media/newsroom/2015/june/new-wco-guide-to-customs-valuation-and-transfer-pricing.aspx.

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> transactions". Such transactions may be examined by Customs to determine whether the price declared for the imported goods is "influenced" by the relationship. In other words, is the price at which the goods have been sold at a lower level than it would have been had the parties not been related and the price had been freely negotiated?
>
> The methodology for determining the Customs value for imported goods subject to ad valorem duty rates is set out in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 ("the Agreement"). All WTO Member countries have an obligation to implement the Agreement and apply this methodology. Some non-WTO Members also choose to adopt it, hence it applies to the vast majority of all international trade.[1]

4. The WCO Guide then contrasts this with transfer pricing in the revenue sphere and the way in which the arm's length principle is applied in practice. It noted that the relationship between customs valuation and transfer pricing has been discussed in various national and international forums over the past few years and that the business community has raised the issue as a matter of concern, in particular advocating that customs administrations take into account available transfer pricing information prepared for direct tax purposes when examining related party transactions and also give consideration to the impact of transfer pricing adjustments on the customs value.[1]

5. The WCO Guide notes that:

> [A]t this stage any alignment or merger of tax and Customs methodologies is not a realistic proposition given the particulars of the existing legal frameworks upon which they are based. The essence of the issue therefore is contained in the following question: to what extent can information contained in transfer pricing documentation, primarily developed for taxation purposes, provide useful information for Customs to determine whether or not the price declared for imported goods has been influenced by the parties' relationship, in order to make a final determination of the Customs value?
>
> The Technical Committee on Customs Valuation has confirmed the basic principle that transfer pricing documentation may provide useful information for Customs in respect of related party transactions, on a case by case basis. The focus is now on providing further guidance to Customs on how to examine and interpret transfer pricing documentation which may be helpful in this regard. The other key question is the impact of adjustments made (after importation) for transfer pricing purposes; in which cases, if any, should such adjustments be taken into account by Customs in determining the Customs value of the imported goods?[1]

6. The Guide recognizes the importance of encouraging customs and tax administrations to establish bilateral lines of communication in order to exchange knowledge, skills and data, where possible, to help ensure that each authority has the broadest picture of a multinational enterprise group's business, as well as its compliance record, and can make informed decisions on the correct revenue liability. WCO is working with relevant tax organizations to that end.[2]

7. WCO has identified as a key message that: "Customs and tax authorities are encouraged to work together and exchange information and knowledge in this area. Similarly, businesses are encouraged to take into account Customs' needs when preparing documentation such as transfer pricing studies and Advance Pricing Agreements."[2]

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Taxation of the extractive industries

"Trade mis-invoicing" and its relationship to "transfer mis-pricing"

Note by the Secretariat

Background

1. The Subcommittee on Extractive Industries Taxation Issues for Developing Countries of the Committee of Experts on International Cooperation in Tax Matters has requested the Secretariat to prepare a short note on the meaning of the term "trade mis-invoicing" compared with the term "transfer mis-pricing". The purpose was to determine the extent to which guidance on the former could be useful in the context of international tax cooperation, other than in the form of guidance on transfer mis-pricing, which had already been addressed in the *United Nations Practical Manual on Transfer Pricing for Developing Countries*.[1]

2. The request was made in the context of the report of the Subcommittee on its activities in 2015, in which the Subcommittee included, as part of its workplan (which was accepted by the Committee), work on the effective review of invoicing and costs (E/C.18/2015/CRP.2).

3. The term "trade mis-invoicing" has not been used in a uniform manner. Sometimes, it seems to be used as a synonym for transfer mis-pricing (or as at least dealing with underinvoicing — or logically, overinvoicing) that is matched between the exporter and the importer and would include many transfer pricing cases.[2]

* E/C.18/2016/1.

[1] United Nations, *United Nations Practical Manual on Transfer Pricing for Developing Countries* (New York, 2013).

[2] See, for example, Chamber of Mines of South Africa, "Trade Mis-Invoicing — Chamber Response to UNCTAD-Sponsored Report" (25 July 2016), available from http://www.chamberofmines.org.za/component/jdownloads/send/24-2016/259-trade-mis-invoicing-chamber-response-to-unctad-sponsored-report. The report of the United Nations Conference on Trade and Development (UNCTAD) being responded to ("Trade Misinvoicing in Primary Commodities in Developing Countries: The cases of Chile, Côte d'Ivoire, Nigeria, South Africa and Zambia" (2016), available from http://unctad.org/en/PublicationsLibrary/suc2016d2.pdf) certainly seems to be addressing related party dealings within transnational corporations.

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However, sometimes, it has been used to identify a practice distinct from transfer pricing.[3] In particular, as seen in paragraph 11 below, it is often used to address cases in which there are mismatched invoices between the exporter and the importer that show up in customs data. One highly relevant use of the term (and related terms) is that found in the report of the Economic Commission for Africa entitled "Illicit Financial Flows: Report of the High-level Panel on Illicit Financial Flows from Africa":

- **Trade mis-invoicing**. The act of misrepresenting the price or quantity of imports or exports in order to hide or accumulate money in other jurisdictions. The motive could, for example, be to evade taxes, avoid customs duties, transfer a kickback or launder money.
- **Abusive transfer pricing**. A transfer price may be manipulated to shift profits from one jurisdiction to another, usually from a higher-tax to a lower-tax jurisdiction. This is a well-known source of illicit financial flows, although not all forms of transfer pricing abuse that result in illicit financial flows rely on manipulating the price of the transaction.
- **Trade-based money-laundering**. A technique where trade mis-pricing is used to hide or disguise income generated from illegal activity.

4. Global Financial Integrity, an organization that has done a great deal of work in this area, has defined trade mis-invoicing as follows:[4]

> Trade mis-invoicing is a method for moving money illicitly across borders which involves deliberately misreporting the value of a commercial transaction on an invoice submitted to customs. A form of trade-based money laundering, trade mis-invoicing is the largest component of illicit financial outflows measured by Global Financial Integrity.

5. Global Financial Integrity provides a hypothetical example of trade mis-invoicing (with fictional country names), as follows:

> In this case of import overinvoicing, the [Taresian] importer illegally moves $500,000 out of [Taresia]. Although he is only buying $1 million worth of used cars from the [Caldarean] exporter, he uses a [Minsharan] intermediary to re-invoice the amount up to $1,500,000. The [Caldarean] exporter gets paid $1 million. The $500,000 that is left over is then diverted to an offshore bank account owned by the Taresian importer.

6. In such an example, there may not be transfer mis-pricing, given that the Taresian importer may not "formally" be a "related entity". It therefore appears that identifying the mis-invoicing that the two are involved in may be an important matter not covered by transfer pricing and the information available may be different. In a non-related party case, information such as a country-by-country report may not be of assistance.

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[3] Economic Commission for Africa, "Illicit Financial Flows: Report of the High- level Panel on Illicit Financial Flows from Africa" (2010):
"**Illicit financial flows (IFFs)**. Money that is illegally earned, transferred or utilized. These funds typically originate from three sources: commercial tax evasion, trade mis-invoicing and abusive transfer pricing; criminal activities, including the drug trade, human trafficking, illegal arms dealing and smuggling of contraband; and bribery and theft by corrupt government officials."

[4] See Global Financial Integrity, "Trade Misinvoicing", available from http://www.gfintegrity.org/issue/trade-misinvoicing/.

7. It is worth noting that in a classic transfer mis-pricing case, the two related parties would have the same incorrect price on both invoices and the transaction would not show up in the data that Global Financial Integrity, for example, uses to establish mis-invoicing, since that looks for different invoice values on the import and export sides. This is another reason why the term is often, although not always, used distinctly, i.e. not in reference to transfer pricing issues. The report of the High-level Panel clearly refers to intra-group transactions subject to transfer pricing analysis when it notes:

> Another widespread means to effect illicit financial flows from Africa is the misinvoicing of services and intangibles such as intra-group loans and intellectual property and management fees. Such practices are making an increasing contribution to illicit financial flows. This is partly due to the increasing share of services in global trade. Other contributing factors are changing technology and a lack of comparative price information. The growth in information and communications technologies has made it possible to transfer huge sums of money at the click of a mouse while also enabling innovative forms of mis-invoicing. It is easier to use the arm's-length principle to determine the proper price of merchandise than it is for intellectual property such as use of a brand name. It is similarly quite difficult to limit the advisory services that related companies can render to one another or to determine the maximum amount that they can lend one another.

8. The report of the High-level Panel refers to the related concept of trade mis-pricing, as follows:

> Trade mis-pricing is the falsification of the price, quality and quantity values of traded goods for a variety of purposes. These could range from the desire to evade customs duties and domestic levies to the intent to export foreign exchange abroad. The over-invoicing of imports has been practised by a variety of importers for a number of years, which is why several African countries have introduced pre-shipment inspection to detect such practices. We established that under-invoicing of exports was quite common in Africa, and particularly in the natural resource sector. The intention of such practices is to reduce the amount of money to be remitted to the exporting country from such sales.
>
> [...] Similar concerns caused Liberia to introduce the tagging of timber exports. This measure was found to be quite effective, as a result of which the Panel brokered contact between Liberia and the Democratic Republic of Congo, which was facing challenges in the same area.

9. This appears to be a very broad term of relevance to both transfer pricing and non-transfer pricing cases. The same report ultimately treats trade mis-pricing as a distinct issue from transfer pricing and recommends the following:

> African countries should ensure that they have clear and concise laws and regulations that make it illegal to intentionally incorrectly or inaccurately state the price, quantity, quality or other aspect of trade in goods and services in order to move capital or profits to another jurisdiction or to manipulate, evade or avoid any form of taxation, including customs and excise duties. The first step in revenue collection is to ensure that all corporations, big and small, are registered for tax purposes. In addition to existing registration requirements, countries may consider a provision in the respective acts regulating the registration of

companies or small businesses to the effect that no registration shall take place without proof of tax registration. In some countries, one cannot open a business bank account without proof of registration for tax. To avoid unnecessary delays in the registration of companies, the relevant agencies must have adequate capacity to process such registrations. We recommend further that the databases of the companies' registration office and the tax authority be linked. African States' customs authorities should use available databases of information about comparable pricing of world trade in goods to analyse imports and exports and identify transactions that require additional scrutiny. States should also begin collecting trade transaction data and creating databases from that information, which can then be searched and shared with other States so that a more robust dataset of local and regional comparables is available.

10. Global Financial Integrity has defined trade mis-pricing broadly (and as an invoicing issue) but with a less clear reference to quality and quantity issues, for example, as follows:[5]

> **Trade mis-pricing**: refers to the deliberate overinvoicing of imports or underinvoicing of exports, usually for the purpose of tax evasion. This practice is a significant component of illicit financial outflows and a major conduit through which residents of developing countries transfer money abroad illegally.

11. Global Financial Integrity has indicated to the Financing for Development Coordinating Secretariat that it has also run into the same confusion over the various terms used. It treats trade mis-invoicing (which, in its view, can also be referred to as trade fraud) as constituted by an illegal activity. Given that the data used by Global Financial Integrity for estimating trade do not allow for examination of individual transactions, that data cannot determine whether the parties to a transaction are related or not and therefore cannot determine whether the mis-invoicing is abusive transfer pricing. Nevertheless, as noted above, related parties are unlikely to have the mismatched invoices on the import and export sides that are often implied in the term "trade mis-invoicing". Global Financial Integrity has indicated that it does not use the term "transfer mis-pricing" given that it treats transfer pricing as either "transfer pricing" (a legal activity) or "abusive transfer pricing", which is an illegal activity, but must be determined to be abusive by a court).

12. The United Nations Practical Manual recognizes transfer pricing as a normal incident of international business, namely, having to price transactions between related entities. Transfer mis-pricing, on the other hand, is explained as follows:

> For the purposes of this Manual, the term "mis-pricing" is used to refer in a short form to pricing that is not in accordance with the arm's length standard. It is not intended to imply that a tax avoidance or evasion motive necessarily exists in a particular case. From the country development perspective, the impact of non-arm's length pricing does not depend on whether or not such an intention exists, though that may of course affect how countries respond to particular instances of such behaviour.

[5] Global Financial Integrity, "The Implied Tax Revenue Loss from Trade Mispricing" (2010), available from http://www.gfintegrity.org/report/the-implied-tax-revenue-loss-from-trade-mispricing/.

13. Transfer mis-pricing is therefore, in United Nations parlance, a pricing that does not reflect the arm's length standard for whatever reason. The term is clearly chosen to make clear that not all transfer pricing is problematic; however, it also expresses that an objectively non-arm's length price can give rise to adjustments under domestic law and bilateral treaties following article 9 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and of the Organization for Economic Cooperation and Development Model Tax Convention on Income and on Capital without the need for an abusive intent or negligence as to abuse. This may be especially important for countries where the tax administration has a higher burden of proof.

Summary and conclusions

14. For the purposes of the work of the Subcommittee, the key conclusions are:

(a) There is no absolute clarity on the term "mis-invoicing" — with some parties appearing to include matching "mis-invoicing" (including between related parties) while others refer to mismatched invoices, which show up more readily in the customs data used. It is therefore sensible to avoid the term or at least to clarify how it is interpreted if used;

(b) On the mismatching invoices approach, calculations as to the extent of "trade mis-invoicing" would, in principle, include related party as well as unrelated party transactions, but should, in practice, not cover transfer mis-pricing to any great extent, since that would include matching invoices on both sides of the transaction — export and import;

(c) This mis-invoicing through mismatched invoices could occur in the extractive sector between unrelated parties, but there seems to be no reason to believe that it has any special application in that area. That is not to deny that if it does occur in that area, the impact on developing countries that are very dependent on commodities might not be disproportionately affected, although this is more likely to be in relation to exports than imports;

(d) Any impact would most likely be on customs duties rather than on taxes although, depending on the prevalent taxes and incentives, there could be some avoidance or evasion;

(e) Issues covered under the broad heading of "trade mis-pricing" appear to potentially cover invoicing issues, including as to quality and quantity, not just price, that may relate to both transfer pricing and non-transfer pricing cases; practical guidance in that area — ensuring that the invoicing reflects the correct actual quality grade and quantity, for example — could assist in both cases, but would be a significant undertaking.

15. Issues of transfer mis-pricing are addressed by a separate subcommittee, the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing, and while there will be interaction between the extractive and transfer subcommittees, as agreed in 2015, this work may have to be commenced in earnest in 2017, rather than 2016. Nevertheless, there does seem to be some room for suitable guidance on invoicing, not directly relating to transfer mis-pricing, which could be relevant to taxation of the extractive industries.

16. One non-transfer pricing area addressed by the report of the Economic Commission for Africa is cases where mis-invoicing is used to increase tax incentives for exports by overpricing the exports. That might be an issue if extractive commodities were subject to such export incentives on an ad valorem basis, which may not be very common.

17. Another possible area would be underinvoicing of imports. This could occur among related parties as part of a transfer mis-pricing arrangement, but also in relation to a transaction with an unrelated party. To the extent that these relate purely to customs duties, they are, however, probably outside the direct scope of the Subcommittee's mandate. There might be taxes that are imposed on imports (there are various taxes on imports into Brazil, for example).[6] The issue for the Subcommittee will be whether this is a sufficiently important issue for United Nations guidance in relation to the extractive industry.

18. The money-laundering motivation for some mis-invoicing may not be a major motivation in the extractive sector and, similarly, in relation to avoidance of capital controls. Given that they are not directly tax-related, in any case, they are perhaps not a suitable subject for the consideration of the Subcommittee.

19. If there is an issue other than transfer mis-pricing that is of relevance to the extractive industries, then guidance on how to detect such mis-invoicing and address it, possibly including legislative recommendations, could be useful.

20. The basic issues, noted in the excerpt on determining what amount or quality of a commodity is being exported, taken from the report of the High-level Panel (see para. 9 above), show that there may be room for general guidance about how to test the accuracy of invoicing as to quality, quantity, price and other aspects, of traded commodities especially, which would be of benefit in both transfer pricing and non-transfer pricing cases. This could be done without reopening specific transfer pricing issues about the pricing of related party commodity transactions that are already under consideration in the United Nations transfer pricing work and elsewhere.

21. In this context, the discussions on practical issues such as the quantification of actual exports in the report of the High-level Panel, as well as the discussion of practical steps to counter "trade mis-pricing" in that report (see para. 9 above) may point to possible areas for useful Committee guidance and Subcommittee work. It could probably not be completed by mid-2017, however, when the members of the Committee end their terms.

[6] See http://thebrazilbusiness.com/article/how-to-calculate-brazilian-import-duties-and-taxes.